IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

Crl.MC.No. 1159 of 2007()

PETITIONER:

K.S.MUHAMMED SAMEER, KALATHIL HOUSE,
U.C.COLLEGE P.O., ALUVA, ERNAKULAM DISTRICT.

BY ADV. SRI.N.J.MATHEWS
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS:

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1. ADDITIONAL DIRECTOR,
DIRECTORATE OF REVENUE INTELLIGENCE,
COCHIN REGIONAL UNIT, XL/525, VILAKUNNEL,
KAITHOTH ROAD, PALARIVATTOM, KOCHI-682 025.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

R1 BY ADV. SRI.P. PARAMESWARAN NAIR, ASSISTANT SGI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1159 of 2007

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Dated this the 4th day of June, 2007

O R D E R

The petitioner faces allegations under Sections 132 and 135 of the Customs Act. The crux of the allegation is that huge loss of revenue was caused by the alleged conduct of the petitioner importing articles by misdescribing them and showing lesser value than the actual value. It is the case of the prosecution that the difference between the actual price and the price shown has been transferred through unauthorised channels. The petitioner has been released on bail subject to conditions. Inter alia, a condition is imposed that the passport of the petitioner must be surrendered before the court. The respondent is thus in possession of the passport of the petitioner.

2. The petitioner approached the learned Addl. Chief Judicial Magistrate (EO), Ernakulam, with an application for modification of the condition and release of the passport to the petitioner. By the impugned order, the learned Magistrate has rejected the prayer in the

wake of the stout opposition by the respondent/prosecution. The petitioner claims to be aggrieved by the said order.

3. The learned counsel for the petitioner submits that the petitioner needs the passport emergently to help him to travel to his place of employment in Dubai. What is the compelling reason? The short submission made is that the employer of the petitioner has cautioned him that if he does not return to his place of employment he will lose his employment as also the VISA which has been issued to him. If this happens it would result in great hardship and loss to the petitioner. In these circumstances it is prayed that the passport may be directed to be released to the petitioner subject to any appropriate condition. Atleast the petitioner may be permitted to undertake one journey to Dubai and return within a period of one month, it is prayed.

4. The application is very stoutly opposed by the learned A.S.G.I. The learned A.S.G.I. submits that the investigation is not complete. Some further time will be required to complete the investigation. Without and before completing the investigation, an order to release the passport may not be issued. If the petitioner were permitted to leave India, it will be virtually impossible to trace and bring him back to continue the process of

law. The petitioner has not been co-operating with the investigation. The quantum of amount involved in the alleged offence committed is huge. It runs to the extent of 2.5 crores, submits the learned A.S.G.I. At any rate, reasonable further time may be granted to the prosecution to complete the investigation before the question of release of the passport is considered. The learned Prosecutor raised a contention that the petitioner is not an employee of any one and he is actually indulged in the activities of his own behalf and that the theory of an employer for him is nothing but a shield used by him to justify his own conduct.

5. I have considered all the relevant inputs. The offence alleged is serious. The amount involved is huge. The condition has remained in force for a fairly long period of time now.

6. Having considered all the relevant circumstances, I am satisfied that the prosecution can be given reasonable further time to complete the investigation. I am not going into the question whether the petitioner is an employee and his employer has threatened or cautioned him that he will lose his employment. I need only mention that sufficient and convincing materials to indicate those circumstances are certainly not placed before me or the learned Magistrate.

7. This Crl.M.C. is accordingly dismissed. I make it clear that the Investigating Officer must complete the investigation as expeditiously as possible, at any rate, within a period of 45 days from this date. The petitioner must co-operate with the Investigators and help them to complete the investigation expeditiously. It shall be open to the petitioner to move the learned Magistrate for release of the passport of the petitioner after the said period of 45 days and the learned Magistrate shall consider such request on the basis of the materials then available.

(R. BASANT)
Judge

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